

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

EDWARD TYRONE MALONE ,
Petitioner,
v.
ERIC ARNOLD, Warden, et al.,
Respondent.

Case No.: 3:15-cv-02942-BEN-RBB

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

Petitioner Edward Tyrone Malone, a state prisoner proceeding pro se, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 in the United States District Court for the Northern District of California on October 20, 2015. (Docket No. 1.) The case was transferred to this Court (ECF No. 5), and dismissed without prejudice for failure to sign the petition under penalty of perjury. (ECF No. 7.) On February 5, 2016, Petitioner filed a First Amended Petition. (ECF No. 10.) Respondent filed a Notice of Motion and Motion to Dismiss the Petition for Writ of Habeas Corpus (ECF No. 15) and a Notice of Lodgment on May 31, 2016. (ECF No. 16.)

On June 24, 2016, Petitioner filed a Notice of intent to proceed without a response, alleging that he was unable to submit an opposition to Respondent's Motion and requesting that the Court "move forward with the appropriate procedures which may legally confirm this matter" (Docket No. 18.)

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2 Subsequently, following review of Petitioner's First Amended Petition,
3 Respondent's Motion to Dismiss, and the lodgments, Magistrate Judge Ruben B. Brooks
4 issued a thoughtful and thorough Report and Recommendation recommending that the
5 Motion be granted. (Docket No. 19). Objections to the Report and Recommendation
6 were due by October 4, 2015. (*Id.*) No objections have been filed. For the reasons that
7 follow, the Report and Recommendation is **ADOPTED**.

8 A district judge "may accept, reject, or modify the recommended disposition" of a
9 magistrate judge on a dispositive matter. Fed. R. Civ. P. 72(b)(3); *see also* 28 U.S.C.
10 § 636(b)(1). "[T]he district judge must determine de novo any part of the [report and
11 recommendation] that has been properly objected to." Fed. R. Civ. P. 72(b)(3).
12 However, "[t]he statute makes it clear that the district judge must review the magistrate
13 judge's findings and recommendations de novo *if objection is made*, but not otherwise."
14 *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc); *see also*
15 *Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir. 2005). "Neither the Constitution nor
16 the statute requires a district judge to review, de novo, findings and recommendations
17 that the parties themselves accept as correct." *Reyna-Tapia*, 328 F.3d at 1121.

18 The Court need not conduct a de novo review given the absence of objections.
19 However, the Court has conducted a de novo review and fully **ADOPTS** the Report and
20 Recommendation. The Motion is **GRANTED** and Petitioner's petition is **DISMISSED**.

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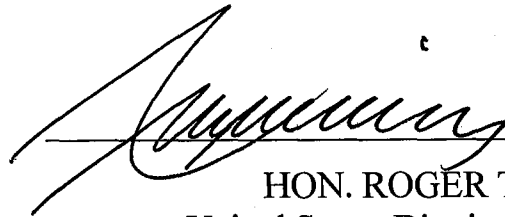
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1 The Court **DENIES** a certificate of appealability because the issues are not
2 debatable among jurists of reason and there are no questions adequate to deserve
3 encouragement. *See Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). The Clerk of Court
4 shall enter judgment **DENYING** the Petition.

5 **IT IS SO ORDERED.**

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7 Dated: October 20, 2016



HON. ROGER T. BENITEZ
United States District Court Judge